U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 01 2010

SRC 07 800 26240

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Sperry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. from Pennsylvania State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, improved machine control and power electronics, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received his Ph.D. from Pennsylvania State University and continued there as a lecturer and postdoctoral researcher upon graduating. The petitioner submitted evidence that he is a member of the Institute of Electrical and Electronics Engineers (IEEE). The petitioner also submitted evidence that membership is open to those who meet specific education or experience requirements. Thus, this membership does not appear to set the petitioner apart from any other engineers. Even if the petitioner had established that IEEE membership is indicative of a degree of expertise significantly above that ordinarily encountered in the field of engineering, such memberships are but one criterion for establishing eligibility as an alien of exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(E), a classification that normally requires an approved alien employment certification. We cannot conclude that meeting one of the criteria for that classification, or even the requisite three criteria, warrants a waiver of the alien employment certification process in the national interest. *Id.* at 218, 222.

The petitioner also submitted reference letters discussing his work at Pennsylvania State University, his manuscripts and published articles, a patent application listing the petitioner as an inventor and media coverage of the device discussed in the patent application from years before the petitioner worked on the project and the patent application was submitted.

In evaluating the content of the letters, we note the following. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of generic "contributions" and a positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from

independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

[redacted] an associate professor at Pennsylvania State University and the petitioner's thesis advisor, concludes that the petitioner's research at that institution "has been nothing short of incredible." While we do not question [redacted] sincerity or expertise, more persuasive are explanations as to how the petitioner has influenced the field. More specifically, [redacted] discusses the petitioner's thesis project, which involved the development of a speed sensor-less control system for an induction machine based on carrier signal injection and the smooth-air-gap induction machine model. In completing this work, according to [redacted], the petitioner resolved the following disadvantages with previous attempts in the field: "1) they utilized second-order effects, 2) they required physical modification of the rotor structure, 3) they lacked rigorous proof of the stability of the technique, or 4) they were subject to error due to noise." [redacted] notes that the petitioner presented and published the results of this work, but provides no examples of how it is already influencing the field.

[redacted], a professor at the University of Sheffield, does not explain how he became aware of the petitioner's work. [redacted] begins by explaining the importance of the petitioner's area of research, which is not contested in this proceeding. [redacted] then asserts that the petitioner "successfully utilized a two-time-scale method for the speed sensor-less control of an induction machine so that unlike the techniques proposed by the others previously, this technique is not based on second-order variables, but it has a better SNR and is less susceptible to noise." [redacted] further discusses additional improvements on previous models, stating that one of these problems had been "haunting researchers' minds for quite some time, and many scientists have failed to reach a solution because the multi-variable and nonlinear nature of induction machines." [redacted] concludes that the petitioner's "success in solving this problem has almost certainly supplied a conclusion for this perplexing issue. The remaining work left will simply be to refine the details since the structure has already been set up thanks to [the petitioner]." Regarding how the petitioner's work has been used in the field, however, [redacted] merely states that he looks "forward to employing the principals of [the petitioner's] creative solution for speed sensor-less control of induction machines in my own research on controlling permanent magnetic machines, and we are looking forward to seeing breakthroughs." [redacted] does not suggest that he has already successfully applied the petitioner's work.

[redacted], an associate professor at the Institute of Electrical Engineering, Chinese Academy of Sciences as well as a visiting professor at Michigan State University, asserts that he became aware of the petitioner's work by attending the petitioner's presentation in 2005 on speed sensor-less control of an induction machine. [redacted] provides similar information about the significance of this work to that discussed above. [redacted] further states:

> [The petitioner's] creative solution opened a new path for speed sensor-less electric machine control. The stability analysis method he used in his paper helped me to solve the stability proof of my projects, which have the similar characteristics and the stability

> are difficult to prove otherwise. The method [the petitioner] used to minimize the torque ripple also inspired me in the design of similar control systems.

Similarly, [redacted], asserts that the petitioner "has inspired me to solve similar problems in my research and development projects."

None of the citations contained in the record are by [redacted]. Moreover, research that is not original or useful would be unlikely to qualify for graduation, funding or publication. That two researchers claim to have found the petitioner's models useful does not establish the petitioner's influence on the field as a whole. The record does contain evidence that the petitioner's research on speed sensor-less control has been minimally cited. With the exception of two citations, however, the citations are of a 2001 article published in the *Journal of the Tsinghua University* reporting the petitioner's Master's degree studies. The record, however, contains no letters from his colleagues in China explaining his role on research projects while a Master's degree student. We are not persuaded that this citation record is indicative of a sufficient influence in the field as a whole.

We acknowledge the submission of non-precedent decisions by this office that, according to counsel, demonstrate that heavy citation is not necessary. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, while citations can serve as probative evidence of an alien's influence in the field, other evidence may certainly exist in the alternative. In this matter, however, we are not persuaded that the record contains sufficient evidence of any type that demonstrates the petitioner's influence in the field as a whole.

[redacted], asserts that the petitioner has been working at this company since 2008, after the date of filing. [redacted] asserts, however, that Aura Systems was previously interested in the petitioner's work and, in 2006, obtained promising results with the petitioner's method, resulting in Aura System's adoption of that type of induction machine control scheme in their next generation products. The record, however, contains no evidence that Aura Systems is known in the field for their superior induction machine control scheme. On appeal, [redacted] discusses the petitioner's work at Aura Systems after the date of filing. Such testimony, however, does not relate to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

[redacted] further asserts that the petitioner also successfully completed other projects during his Ph.D. studies as follows:

> He successfully developed a 30 KW DC power supply with bidirectional power flow capability and power factor correction for use in an EMALS (Electromagnetic Aircraft Launch system) testbed. He has developed stabilizing control algorithms for DC-DC

> converters with input LC filters. He has conducted a series of characterizations of ceramic capacitors capable of operating under extreme conditions (cryogenic temperatures, high voltage, high temperature, etc.) using power electronic circuits.

According to [redacted] at least some of the above projects were carried out for TRS. [redacted] explains the importance of developing ceramic capacitors that maintain their dielectric constant at extremely low temperatures for space missions as well military and civilian applications of superconductor motors. [redacted] further explains that in order to develop such capacitors, researchers need a complete power electronics testing system, which the petitioner "effortlessly accomplished." [redacted] opines that such a system could not have been developed by someone with "mere basic competence in the respective disciplines." [redacted] continues that the petitioner developed characterization circuits with different topologies of DC/DC converters and measured the voltage across the capacitors with his own computer program. [redacted] affirms that the petitioner's testing confirmed the performance of TRS' cryogenic capacitors, contributing to an award for the second phase of the project. Finally, [redacted] discusses other projects on which the petitioner worked, including capacitor packs that are in "final test at our customer."

According to the Department of Labor's Occupational Outlook Handbook, accessed at http://www.bls.gov/oco/ocos027.htm#nature on January 20, 2010 and incorporated into the record of proceedings, engineers use computers extensively to produce and analyze designs; to simulate and test how a machine, structure, or system operates; to generate specifications for parts; to monitor the quality of products; and to control the efficiency of processes. In addition, electrical engineers design, develop, test, and supervise the manufacture of electrical equipment. Some of this equipment includes electric motors; machinery controls, lighting, and wiring in buildings; radar and navigation systems; communications systems; and power generation, control, and transmission devices used by electric utilities. Thus, the fact that the petitioner provided development and testing services to TRS does not set him apart from other engineers. The record contains no evidence that the products on which the petitioner worked for TRS have generated trade or general media attention as being particularly notable improvements in electrical engineering or comparable evidence of the significance of the petitioner's work for TRS.

Finally, [redacted] states:

> In 2006-2007, he developed the power electronic circuitry for an energy harvesting backpack, which revolutionarily generated 12 W of usable power from a human being walking, as part of a Phase 1 STTR sponsored by ONR [the Office of Naval Research]. Due to [the petitioner's] exceptional work on this project, we have secured Phase II funding.

[redacted], a biology professor at the University of Pennsylvania and founder of [redacted], asserts that he has known the petitioner since beginning a collaboration with [redacted]

and the development of the Energy Harvesting Backpack. [redacted] explains that the backpack was designed to address the growing demand for electric devices such as satellite phones and the limits of a human's ability to carry loads. [redacted] explains that 25 percent of a soldier's load may consist of replacement batteries. As discussed by [redacted], the backpack generates electric energy to power devices or charge batteries and the ergonomic design of the backpack reduces the peak force of the individual carrying the load. [redacted] asserts that the petitioner "was the one who carried out the crucial development" of the electronics of the backpack, which produces 12 W as compared with other human-driven energy harvesting systems that produce less than 1 W.

The petitioner submitted several general media articles discussing the invention of the backpack dated in September 2005. These articles reference the report of this backpack in a 2005 edition of *Science*. The petitioner does not list any articles published in *Science* on his curriculum vitae and the record does not contain the 2005 *Science* article referenced in the media articles. [redacted] curriculum vitae, however, contained in the record, does list an article entitled "Generating Electricity from Normal Human Movement," published in a 2005 issue of *Science*. Significantly, the petitioner is not a listed author of this article. Moreover, as quoted above, [redacted] indicates that the petitioner did not become involved in this project until 2006, after the article in *Science* and the general media coverage. We acknowledge that the record contains a 2008 patent application for the backpack listing the petitioner as the third of three inventors. In addition, the January 2008 edition of *Scientific American* lists the backpack as one of 50 innovations to receive a SciAm 50 award.

Based on the above, it does not appear that the petitioner was involved in the initial design of the backpack reported in *Science* in 2005 that generated considerable media coverage. Rather, the petitioner joined the project later and is a listed inventor of the ultimate patent-pending design. The backpack clearly generated media attention in the general media in 2005 and in *Scientific American* in 2008 based on its potential. The record, however, does not establish that the backpack has lived up to the initial hype. Specifically, the record contains no evidence that the military or a designer of search and rescue equipment has expressed any interest in licensing the patent for the backpack or otherwise acquiring the backpacks.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than

on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.